

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRANCE HARDIN,

Petitioner,

v.

WILLIE O. SMITH,

Respondent.

CASE NO. 4:10-CV-13672
JUDGE MARK A. GOLDSMITH
MAGISTRATE JUDGE PAUL J. KOMIVES

MEMORANDUM ORDER DENYING AS PREMATURE AND WITHOUT PREJUDICE
PETITIONER'S MOTION FOR EQUITABLE TOLLING (docket #2)

This matter is before the Court on petitioner's motion for equitable tolling to allow his petitioner to proceed. Petitioner asserts that he is entitled to equitable tolling of the limitations period on various grounds. Because petitioner's motion is premature, it will be denied without prejudice to petitioner reasserting his equitable tolling arguments should they later become relevant in this case.

Petitioner's arguments for equitable tolling seek to avoid the effect of the statute of limitations governing habeas applications, 28 U.S.C. § 2244(d). However, at this point the statute of limitations is not an issue in this case. Respondent has not yet filed an answer, nor has respondent filed a motion for summary judgment on statute of limitations grounds. Although the Court may raise the limitations issue on its own motion, it is not obligated to do so. *See Day v. McDonough*, 547 U.S. 198, 209 (2006). And, if it does so, the Court must provide notice to petitioner and an opportunity to respond, and must assure itself that petitioner will not be prejudiced by the delay in

considering the limitations issue. *See id.* at 210-11. Until such time as the limitations issue is raised by the parties or by the Court through proper notice to the parties, petitioner's request for equitable tolling is premature. *See Lopez v. Campbell*, 1:05-cv-00481, 2007 WL 2580482, at *3 (E.D. Cal. Aug. 31, 2007); *Dent v. Cain*, No. 05-2595, 2006 WL 2038161, at *4 (E.D. La. July 19, 2006); *cf. Goodwin v. Dretke*, 118 Fed. Appx. 817, 819-20 (5th Cir. 2004).

Accordingly, it is ORDERED that petitioner's motion for equitable tolling is hereby DENIED AS PREMATURE. This denial is WITHOUT PREJUDICE to petitioner asserting his equitable tolling arguments should the limitations issue later be raised by respondent or the Court. The attention of the parties is drawn to FED. R. CIV. P. 72(a), which provides a period of fourteen days from the date of this Order within which to file any objections for consideration by the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

IT IS SO ORDERED.

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

Dated: March 21, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on March 21, 2011.

s/Susan Jefferson
Deputy Clerk

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